

REMARKS

Claims 1 to 16 remain pending. Claims 17 to 30 have been withdrawn from consideration. Claims 31 to 46 have been added.

Claims 1 to 3, 6, 7, 14 and 15 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,910,308 to D'Jang (the D'Jang patent). The Action alleges that the D'Jang patent discloses a cosmetic composition having 10 to 30 percent *Gynostemma*.

Claims 1 to 3, 6, 7, 14 and 15 are novel in view of the D'Jang patent because they require coconut water. The D'Jang patent does not disclose a skin composition having coconut water.

Claims 1 and 11 have been rejected under 35 U.S.C. 102(b) as being anticipated by Japan Patent Application No. 2000128729A (JP '729). The Action alleges that JP '729 discloses a skin composition having *Rhodiola*.

Claims 1 and 11 are novel in view of JP '729 because they require coconut water. JP '729 does not disclose a skin composition having coconut water.

Claims 1, 2, 8 and 9 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,660,840 to Pruett (the Pruett patent). The Action alleges that Pruett patent discloses a cosmetic composition having 50 percent coconut water.

Claims 1, 2, 8 and 9 are novel in view of the Pruett patent because they require coconut water. The Pruett patent discloses a skin treatment having coconut milk, a different substance than coconut water. Coconut water is the liquid present in the center of young coconuts, while coconut milk is the substance present in the meat of coconuts.

Claim 1 has been rejected under 35 U.S.C. 102(b) as being anticipated by Japan Patent Application No. 200014498A (JP '498). The Action alleges that JP '498 disclose a skin composition having neem extract.

Claim 1 is novel in view of JP '498 because they require coconut water. JP '498 does not disclose a skin composition having coconut water.

Claims 1 to 7, 14 and 15 have been rejected under 35 U.S.C. 103(a) as being obvious in view of the D'Jang patent. The Action admits that the D'Jang patent does not disclose a cosmetic composition having *Gynostemma* in the claimed amounts, other ingredients, or forms. The Action states that it is obvious to optimize ingredient amount, add the claimed additional ingredients, and to formulate the composition in the claimed forms.

Claims 1 to 7, 14 and 15 are nonobvious in view of the D'Jang patent because they require coconut water. The D'Jang patent does not disclose or suggest a skin composition having coconut water.

Claims 1 to 5, 11, 12, 14 and 15 have been rejected under 35 U.S.C. 103(a) as being obvious in view of the JP '729. The Action admits the JP '729 does not disclose a cosmetic composition having *Rhodiola* in the claimed amounts, other ingredients, or forms. The Action states that it is obvious to optimize ingredient amount. It was also said to be obvious to add the claimed additional ingredients and to formulate the composition in the claimed forms.

Claims 1 to 5, 11, 12, 14 and 15 are nonobvious in view of JP '729 because they require coconut water. JP '729 does not disclose or suggest a skin composition having coconut water.

Claims 1 to 5, 8, 9, 14 and 15 have been rejected under 35 U.S.C. 103(a) as being obvious in view of the Pruett patent. The Actions states that the Pruett patent does not disclose a cosmetic composition having coconut water in the claimed amounts, other ingredients, or forms. The Action states that it is obvious to optimize ingredient amount, add the claimed additional ingredients and to formulate the composition in the claimed forms.

Claims 1 to 5, 8, 9, 14 and 15 are nonobvious in view of the Pruett patent because they require coconut water. The Pruett patent discloses a skin treatment having coconut milk, a materially different substance than coconut water. Coconut water is the liquid present in the center of young coconuts, while coconut milk is the substance present in the meat of coconuts.

Claims 2 to 5, which require coconut water in certain amounts, further distinguish over the Pruett patent for these reasons as well.

Claims 1 to 5, 14 and 15 have been rejected under 35 U.S.C. 103(a) as being obvious in view of the JP '498. The Action admits that the JP '498 does not disclose a cosmetic composition having coconut water in the claimed amounts, other ingredients, or forms. The Action states that it is obvious to optimize ingredient amount, add the claimed additional ingredients, and formulate the composition in the claimed forms.

Claims 1 to 5, 14 and 15 are nonobvious in view of JP '498 because they require coconut water. JP '498 does not disclose or suggest a skin composition having coconut.

Claims 1 to 9 and 11 to 16 have been rejected under 35 U.S.C. 103(a) as being obvious in view of the D'Jang patent, JP '729, the Pruett patent, and JP '498. The Action states that it is prima facie obvious to combine two or more ingredients, each of which is taught by the prior art as being useful for the same purpose to form a third composition useful for the same purpose. The results obtained were deemed to be additive. The Action also states that it is obvious to optimize ingredient amount, add the claimed additional ingredients, and formulate the composition in the claimed forms.

Claims 1 to 9 and 11 to 16 are nonobvious in view of the D'Jang patent, JP '729, the Pruett patent, and JP '498. Claims 1 to 9 and 11 to 16 require coconut water. None of the cited

references, including the Pruett patent, disclose or suggest coconut water. Thus, the combination of the teachings of the cited references does not yield or suggest the claimed invention.

Claims 1 and 10 have been rejected under 35 U.S.C. 103(a) as being obvious in view of the D'Jang patent, JP '729, the Pruett patent, and JP '498 as applied to claims 1 to 9 and 11 to 16 above and further in view of U.S. Patent No. 5,698,423 to Holowach-Keller et al. (the H-K patent). The Action admits that the D'Jang patent, JP '729, the Pruett patent, and JP '498 do not disclose use of a neem seed culture in a composition. The H-K patent is said to disclose the use of a neem seed culture to create a pharmaceutical extract as beneficial over the use of a straight neem seed extract due to elimination of contaminants. The Action states that based on the disclosure of the H-P patent, it is obvious to use a neem seed culture in the composition of the present invention to create a superior product.

Claims 1 and 10 are nonobvious in view of the D'Jang patent, JP '729, the Pruett patent, and JP '498 as applied to claims 1 to 9 and 11 to 16 above and further in view of the H-K patent. Claims 1 and 10 require coconut water. None of the cited references, including the Pruett patent, disclose or suggest coconut water. Thus, the cited combination of the teachings of the cited references does not disclose or suggest the claimed invention.

New claims 31 to 35 patentably distinguish over the teachings of the D'Jang patent. Independent claim 31 requires that *Gynostemma* be present from about 0.0001 wt% to about 5 wt%.

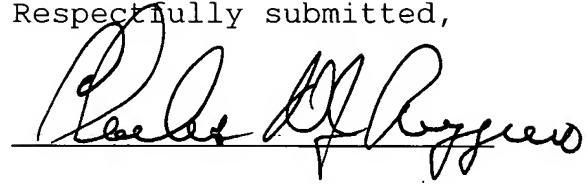
In contrast, the D'Jang patent discloses that *Gynostemma* is present in the disclosed composition from about 10 wt% to about 30 wt%, substantially more than the claimed 0.0001 wt% to about 5 wt% concentration range. Dependent claims 32 to 34 further distinguish the teachings of the D'Jang patent by setting forth additional concentration ranges. The efficacy of *Gynostemma* in the about 0.0001 wt% to about 5 wt% concentration range was demonstrated in Example 3 and visually represented in Figure 3. Test data indicated that *Gynostemma* at 0.001 wt% and 0.01 wt% concentrations resulted in significantly increased ATP production compared to control cultures. Thus, the claimed invention is novel and nonobvious in view of the D'Jang patent.

New claims 36 to 41 patentably distinguish over the JP '498. Independent claim 36 requires the combination of *Azadirachta* and either *Gynostemma* and *Rhodiola*. JP '498 does not disclose or suggest either of the possible combinations. Claims 37 to 40 further distinguish over JP '498 in that they require *Azadirachta* to be present in certain concentration ranges.

New claims 42 to 46 patentably distinguish over JP '498 and the D'Jang patent. Independent claim 36 requires the combination of *Azadirachta* and either *Gynostemma* and *Rhodiola*. Neither JP '498 nor the Pruett patent disclose or suggest the combination. Claims 43 to 46 further distinguish over JP '498 in that they require that the combination be present in certain ranges.

Reconsideration of claims 1 to 16 is deemed warranted in view of the foregoing. Allowance of these claims and new claims 31 to 46 is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N. J. Ruggiero", written over a horizontal line.

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Charles N. J. Ruggiero
Reg. No. 28,468
Attorney for Applicants
Ohlandt, Greeley, Ruggiero
& Perle, L.L.P.
One Landmark Square
Stamford, CT 06901-2682
Tel: 203-327-4500
